

**REMARKS**

Claims 1-35 are pending in this application. By this Amendment, claims 1-21 are amended and new claims 22-35 are added. Support for claim 1 can be found in the subject matter of claim 2. Claims 1-21 are amended for form and clarity. Support for new claims 22-35 can be found in the claims from which they respectively depend. Thus, no new matter is added.

**I. §112 Rejection**

Claims 1, 8, 11, 13, 16, 17, 20 and 21 are rejected under 35 U.S.C. §112, second paragraph. Claims 2-7, 9, 10, 12, 14, 15, 18 and 19 are rejected because they variously depend from claims 1, 8, 11, 13, 16, 17, 20 and 21. The rejection is respectfully traversed.

By this Amendment, claims 1, 8, 11, 13, 16, 17, 20 and 21 are amended in response to the rejection and thus satisfy formal requirements of §112, second paragraph. Therefore, claims 2-7, 9, 10, 12, 14, 15, 18 and 19 also satisfy formal requirements of §112, second paragraph. Withdrawal of the rejection is thus respectfully requested.

**II. The Claims Define Patentable Subject Matter**

Claims 1, 3, 5-7, 10, 13-16, 18 and 21 are rejected under 35 U.S.C. §102(b) over U.S. Patent No. 6,376,819 to Neal et al. ("Neal"). Claim 2 is rejected under 35 U.S.C. §103(a) over Neal in view of U.S. Patent No. 6,057,916 to Katajima ("Katajima"). Claims 4 and 20 are rejected under 35 U.S.C. §103(a) over Neal in view of U.S. Patent No. 6,476,943 to Yertoprakhov ("Yertoprakhov"). Claims 8 and 9 are rejected under 35 U.S.C. §103(a) over Neal in view of U.S. Patent No. 6,184,974 to Neal et al. ("Neal '974"). Claim 11 is rejected under 35 U.S.C. §103(a) over Neal in view of U.S. Patent No. 4,290,043 to Kaplan ("Kaplan"). Claim 12 is rejected under 35 U.S.C. §103(a) over Neal in view of U.S. Patent Application Publication No. 2001/0024270 to Shirai et al. ("Shirai"). Claim 17 is rejected

under 35 U.S.C. §103(a) over Neal in view of U.S. Patent Application Publication No. 2003/0011757 to Hirohara et al. ("Hirohara"). Claim 19 is rejected under 35 U.S.C. §103(a) over Neal. The rejections are respectfully traversed.

None of the applied references, alone or in permissible combination, teaches or would render obvious every feature of independent claims 1 and 13. None of the applied references discloses an evaluation unit for determining the inclination as recited in independent claim 1; and evaluating of the signals and determining of the inclination of the device, as recited in independent claim 13.

The Office Action, referring to Fig. 6, asserts that element 44 of Neal corresponds to the claimed evaluation unit (see Office Action, page 3). Applicants respectfully assert that element 44 is not shown in Fig. 6 of Neal. Moreover, element 44 of Neal corresponds to a CCD camera 44 (see Neal, Fig. 3).

Neal does not disclose an optical inclinometer comprising a medium that has an inclination-sensitive surface, as recited in independent claim 1, and as similarly recited in independent claim 13.

The Office Action, at page 5, acknowledges that Neal does not disclose a medium that has an inclination sensitive surface. The Office Action asserts that Katajima remedy the deficiencies with respect to Neal and one of ordinary skill in the art would have combined Neal and Katajima to achieve the claimed invention of the current application. These assertions are respectfully traversed.

A person of ordinary skill in the art would not be motivated to combine Neal and Katajima, as alleged in the Office Action. The basic idea of Neal is "to move the wavefront across the lens array in steps that are a fraction of a lens diameter" (see Neal, col. 2 lines 19-21). During the movement, the surface of a medium must be static in order to allow an accurate reading. This is evidenced by the fact that all the mediums disclosed in Neal, i.e.,

silicon wafer, roll and sheet glass, plastic or metal film are either rigid or have static surfaces (see Neal, col. 1, line 60 and col. 2 lines 13-14). This is further evidenced by the statement that one object of the invention of Neal is to have a good height sensitivity, which is not relevant for an inclination sensitive material, such as liquid (see Neal, col. 2, lines 10 and 11). Thus, there would have been no motivation to combine Neal and Kitajima because by replacing static surfaces disclosed in Neal with an inclination sensitive material, such as liquid, would render Neal incapable to function for its intended purpose.

Furthermore, Yertoprakhov and Neal '618, Kaplan, Shirai and Hirohara do not remedy the above-described deficiencies with respect to Neal.

Thus, for at least these reasons, independent claims 1 and 13 are patentable over Neal, Katajima, Yertoprakhov, Neal '618, Kaplan, Shirai and Hirohara. Further, claims 2-12 and 14-21, which variously depend from independent claims 1 and 13, are also patentable over all of the applied references, for at least the reasons discussed above with respect to independent claims 1 and 13, as well as for the additional features they recite. Withdrawal of the rejections is thus respectfully requested.

### **III. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachment:  
Amendment Transmittal

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